

DAVID A. PATERSON
GOVERNOR

STATE OF NEW YORK
State Capitol P.O. Box 2062
Albany, NY 12220-0062
www.cio.ny.gov

MELODIE MAYBERRY-STEWART, Ph.D.
CHIEF INFORMATION OFFICER
DIRECTOR OF OFFICE FOR TECHNOLOGY

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

November 4, 2009

Re: Comments – NBP Public Notice #7
GN Docket Nos. 09-47, 09-51, 09-137

Dear Ms. Dortch:

The Federal Communications Commission's (FCC) September 25, 2009 Public Notice (Notice) requests comments on how governments at all levels promote adoption and deployment of broadband technologies through E-government and civic engagement, and government broadband initiatives, support and policies. New York recognizes the profound affect state and federal government can have on the adoption and deployment of broadband services. In crafting a national broadband plan, the FCC should regard the contributions made to date by private industry, and consider the appropriate balance between the role of government and the value of continued competition.

Government Broadband Initiatives and Use of Government Programs and Policies to Support Broadband Adoption:

The State of New York has launched a number of broadband initiatives, government programs and policies to support broadband adoption.

New York State Universal Broadband Council

The New York State Universal Broadband Council was formed in December 2007 to facilitate increased and affordable access to high-speed Internet service, which when combined with digital literacy programs, can dramatically improve social, cultural and educational opportunities that ultimately lead to increased job creation and economic development.

Comprised of representatives from a broad spectrum of stakeholders--government, academia, community associations, and the private sector, the Council was tasked to develop strategies to ensure that every New Yorker has access to affordable high-speed Internet service. The Council developed a comprehensive statewide strategy that charts a course towards affordable broadband access throughout the State. This strategy leverages existing resources, considers new ways to extend high-speed Internet access beyond traditional means, and recommends approaches to increase digital literacy in underserved and rural communities.

During its first year, the Council:

- Granted \$5 million in awards for projects across the State by leveraging community based public/private partnerships;
- Launched the statewide broadband mapping initiative with county-wide validation efforts using public and private partners;
- Developed and approved statewide digital literacy standards;
- Launched a health and human services web portal, mybenefits.gov, starting with eFood and eHeap applications to increase digital literacy and household adoption rates for low income households; and
- Conducted an Economic Development Survey to ascertain the broadband impact.

In addition, the Council released its first annual Universal Broadband Report in May 2009 highlighting the Council's 2008 accomplishments and setting forth the priorities for 2009. The Council also guided the State's efforts in responding to the grant opportunities afforded by the Broadband Technology Program and the Broadband Initiatives Program.

Executive Order 22

In June 2009, Governor David Paterson signed Executive Order 22 ("Executive Order"), establishing the New York State Broadband Development and Deployment Council ("Council") to build on the initiatives and achievements of the New York State Council for Universal Broadband, which it replaced.

The Executive Order charges the Council with the following duties:

- Promote the long term growth and enhancement of the delivery of broadband services to residential, business, educational, medical, commercial, nonprofit and governmental entities that includes unserved, underserved and distressed areas within the State, at rates that are affordable;
- Continue the work of the New York State Council for Universal Broadband, focusing on developing, recommending and implementing strategies and policies to improve broadband rankings in the United States and globally to stimulate the economy and recapture global competitiveness; and
- Advise the Governor concerning the proposed legislation, the development and application of strategies to increase the deployment of broadband infrastructure and broadband service, identify and advise on state, federal and private sector funding opportunities, and, based on data received from other State agencies and interested stake holders, develop broadband policy within the State.

New York State's Broadband Strategy and Roadmap

With the release of the "New York State Universal Broadband Strategic Roadmap" ("Strategic Roadmap") in 2007, New York State articulated a clear universal broadband policy. The Strategic Roadmap presents the New York State Broadband Strategy ("Strategy") which aims to ensure that every New Yorker has access to affordable high-speed Internet Services. The Strategic Roadmap was recently updated in June 2009.

The Roadmap sets forth the following goals:

- Provide all New Yorkers with access to high speed, affordable broadband services from anywhere, at anytime;
- Close the digital divide and increase digital literacy levels by providing training and educational opportunities in unserved and underserved, urban and rural communities;
- Foster economic development and build stronger public/private partnerships;
- Accelerate the use of state e-government services offered over the Internet to citizens, businesses and visitors;
- Create jobs through innovative community-based digital literacy and technology training programs to increase household technology adoption rates; and
- Achieve and maintain speed and coverage goals aligned with state and federal policies to achieve and sustain competitive advantages; and

New York's recommended approach to accomplishing the above-mentioned goals is a comprehensive and holistic one. The Roadmap seeks to accomplish these goals by focusing on:

- Accelerating broadband infrastructure build outs for residential, commercial and government institutions;
- Increasing adoption rates and digital literacy programs to increase computer proficiency levels at home and at work; and
- Stimulating demand for broadband services to attract and retain a strong digital economy.

The Strategy calls for measuring community impact using the following evaluation criteria:

- Change in average statewide broadband speeds;
- Change in average statewide broadband coverage rates;
- Change in average computer ownership and adoption rates of communities;
- Change in average broadband penetration rates; and
- Change in new digital economy index measures.

New York State's commitment to making broadband accessible for all New Yorkers is a continuum with aggressive strategic goals for speed, coverage, adoption and penetration by 2010, with the expectation that this will place New York on a path to achieve ubiquitous high speed, high capacity broadband.

New York State Universal Broadband Grant Program

The New York State Universal Broadband Grant Program ("Grant Program") is designed to encourage New York State's communities to build out broadband infrastructures and develop digital literacy programs to provide individuals with the skills needed to effectively understand and use the Internet. The New York State Chief Information Officer/Office for Technology ("CIO/OFT") was selected to administer the Grant Program, with guidance and recommendations from the NYS Universal Broadband Council.

The Grant Program was officially started in 2007 when the New York State Legislature appropriated \$5 million for the 2007-2008 fiscal year to be used to provide grants for broadband in underserved and unserved, urban and rural communities. The \$5 million appropriation was comprised of two appropriations for \$2.5 million: \$2.5 million for distribution

to facilitate increased physical access to broadband Internet services statewide, and \$2.5 million to provide equal and universal access to broadband Internet services for underserved rural and urban areas, including schools and libraries.

The grants under the Grant Program for FY 2007-2008 were awarded through a competitive process, which leveraged additional funds by offering grants that match investments by private or other governmental entities. CIO/OFT issued a Request for Proposal seeking projects for which funding would:

- Facilitate an open access environment to promote competition and provide consumers with choice;
- Increase universal access to high-speed, affordable broadband in New York;
- Increase digital literacy in unserved and underserved urban and rural communities;
- Foster economic development throughout the State;
- Accelerate the use of State and local e-government services offered through the Internet to residents, businesses and visitors; and
- Create jobs through innovative community-based digital literacy and technology training.

The RFP sought proposals which addressed broadband needs through the development of community-based, public/private partnerships to ensure sustainability beyond the grant funding received. Proposals that were comprehensive (i.e. provided integrated solutions to address all components of the New York State Broadband Strategy), reached the highest number of households and engaged partners were favored.

Grant awards were made to 9 recipients for broadband projects which aim to facilitate increased access to broadband internet services in New York State and/or provide universal access to broadband Internet services for underserved rural and urban areas. It is anticipated that these broadband projects will lead to increased broadband adoption.

All Grant recipients are required to submit quarterly reports for five years. In each quarterly report, Grant recipients are required to provide, among other things, the following: a project summary and status; a community impact summary; and baseline measurements, including but not limited to the number of broadband subscribers and the number of people enrolled in digital literacy training courses, for all project goals. The first quarterly reports are due by January 10, 2010.

Mapping Initiative

Executive Order 22 authorizes the NYS Broadband Development and Deployment Council to request the assistance of NYS's Office of Cyber Security and Critical Infrastructure ("CSCIC") to continue the broadband mapping work that the agency became engaged in earlier this year. Specifically, CSCIC is charged with:

- Accumulating and mapping data relating to existing broadband infrastructure, including conduit space, dark fiber, and leased assets;
- Creating and maintaining a comprehensive database, including information such as speed, carrier, capacity, coverage, backhaul capacity, and infrastructure technology; and

- Reporting on the location of all underserved and unserved areas of the State.

CSCIC was recently awarded approximately \$2.5 million in federal stimulus funding for broadband mapping and planning activities, under the Broadband Data Improvement Act. This money will enable the mapping of New York's un-served and underserved areas to facilitate deployment of high-speed Internet access across the State, increase digital literacy programs, and spur economic development. New York State is the largest awardee to-date under the State Broadband Data and Development Grant Program. The grant recipient will deploy state-of-the-art geographic information systems tools to ensure the efficient delivery of high quality data. CSCIC has developed strategic partnerships with the private sector broadband community to aggregate the data on broadband availability in the State and to map the "backbone" infrastructure connection points. CSCIC will also provide program support for the Governor's Broadband Stimulus Program Office and will be supporting several activities including studies on the barriers to broadband adoption and the requirements for industrial level broadband connections to support businesses in New York.

E-Government and Civic Engagement

Through broadband, governments can engage and serve their citizens by expanding opportunities for those citizens to utilize government services at their convenience. Broadband can provide citizens with direct access to government services, thus serving as a mechanism to help citizens connect to their government. The ability to put government services, information, and applications online not only enables citizens to interact with their government when it is convenient for them, but also creates greater government efficiency by being able to use data for various applications and programs eliminating the need for duplicative data collection. E-government enhances access and transparency, while controlling costs. Online services and digital literacy are essential for increasing e-government. Both of these are fundamental components of the New York State Universal Broadband Strategy.

Expansion of the State's web portals to deliver cost-efficient services to New Yorkers is an integral part of the NYS Universal Broadband Strategy. In furtherance of such an expansion, the NYS Office of Temporary and Disability Assistance (OTDA) launched the "MyBenefits.gov" portal to provide a single site for New York State's families and community partners to connect with benefits, services and work supports. "Ultimately, MyBenefits.gov will allow individuals and families to learn about and apply for an array of work supports, customized to fit their unique circumstances, by answering one simple set of questions online." David Hansell, Commissioner of OTDA. The State intends to migrate other health and human services agencies to web portals to engage constituents in the near future.

In an effort to promote government participation, increase collaboration and expand the State's ability to share information, the NYS Office of the Chief Information Officer/Office For Technology has recently launched Empire 2.0 – a New York State social media networking initiative. Empire 2.0 represents a new and innovative way for New York State to "Create, Connect, and Collaborate". The Empire 2.0 strategy is a roadmap for New York State agencies to use Web 2.0 (new media, social collaborative tools and technologies) to improve intergovernmental communications and encourage citizen involvement by initiating conversations to strengthen communities and government. The Empire 2.0 strategy encourages state agencies to embrace these engaging technologies to interact with citizens, businesses, and employees with increased efficiency, collaboration, transparency, and openness.

In addition to making government services available online, citizens must know how to access and utilize the services. One of the goals of the New York State Universal Broadband Strategy is to close the digital divide and increase digital literacy levels by providing training and educational opportunities. In furtherance of this goal, the New York State Council for Universal Broadband developed and approved statewide digital literacy standards. In addition, early adopter e-government applications were developed and integrated into digital literacy training programs for the MyBenegits.gov web portal. The State intends to identify additional State government services to include in digital literacy training programs.

Use of Government Assets and Policies to Support Broadband Deployment:

New York's Public Service Commission ("PSC") has taken a number of actions that have increased the potential for broadband deployment and access:

Cable System Rebuild Initiatives

During the 1980s and early 1990s, initial cable franchise agreements were expiring and municipalities and Cable Companies were experiencing their first round of franchise renewals. Generally speaking, by that time cable system deployments in New York were ahead of national deployment trends. With construction activity increasing exponentially at the time outside the state and initial in-state construction activities were winding down after the initial surge, the New York State Commission on Cable Television (the Cable Commission, which was merged with the PSC in 1995) was concerned: (1) that rapidly rising cable revenues generated by the state's large and growing subscriber base would be diverted to deployments outside of the state; and (2) the resulting lack of investment in systems within the state would cause those systems to lag technologically. Consequently, the Cable Commission devised an informal policy of reserving long-term (e.g. 10 year) renewal approvals for franchisees that committed to an immediate reinvestment of revenues toward system rebuilds guaranteeing a minimum capacity of 550 MHz. By the early 1990s, with further advances in cable system technology and large increases in available service offerings, most companies were voluntarily committing to guarantee a minimum capacity of 750 MHz or more.

The benefits of that policy continue to the present time, as cable systems in New York are poised at a level of technical capability which allowed seamless engineering and deployment of digital broadband technology, as well as high-speed Internet and digital voice services. As a direct result, these advanced services have been made available throughout the state and to a much wider subscriber base ahead of most other states.

Declaratory Ruling on Verizon System Improvements

The PSC determined that Verizon New York Inc. (Verizon) has existing authority to improve its telecommunications system and therefore, does not require further state or local authorization to upgrade its facilities to fiber.¹ A cable franchise would be required if and when Verizon desired to provide cable (i.e. video) service to subscribers or if the nature of its system

¹ Case 05-M-0250 et al, Joint Petition of the Town of Babylon, the Cable Telecommunications Association of New York, Inc. and CSC Holdings, Inc. for a Declaratory Ruling Concerning Unfranchised Construction of Cable Systems in New York by Verizon Communications, Inc. Declaratory Ruling (issued June 15, 2005)

improvements involve the installation of equipment to be used exclusively for cable related service. This ruling clarified state law on the subject and ensured that Verizon's efforts to improve the technological capabilities of its telecommunications system would not be slowed or impeded by unnecessary regulation. On the other hand, the ruling carefully spelled out the circumstances under which a cable franchise would be necessary and preserved legitimate local authority over the deployment of cable service.

Pole Attachments

In August 2004 the PSC reviewed and reformed the pole attachment process that telephone and electric utility pole owners must follow in order to accommodate all pole attachments including telecommunications and cable attachments.² In undertaking these reforms, the PSC sought to expedite the attachment process, minimize delays and disputes, and create incentives conducive to achieving the goal of vibrant competition in New York. The PSC recognized that in order for attachers to be competitively viable they would need pole access on an accelerated schedule to complete upgrades and new-builds for deployment of important services, including broadband. In Orders issued January 24, 2006³ and June 19, 2006⁴, the Commission approved petitions filed by National Grid Communications, Inc. (Gridcom) and Niagara Mohawk Power Corporation (NMPC) which permits the attachment of wireless equipment on NMPC transmission facilities. These Orders allow for the installation of cellular antennas and base equipment attachments to poles further expanding wireless telecommunications coverage in New York. The ability of wireless carriers to attach to existing utility infrastructure will fill in gaps in wireless service coverage areas including rural areas in the state, and will allow for the increased availability of wireless broadband service throughout the state.

The New York State Commission on State Asset Maximization (SAM) submitted its Final Report of Recommendations (Final Report) to Governor David A. Paterson on June 1, 2009. Prior to issuing the Final Report, the Commission issued a Preliminary Report, which outlined a set of Guiding Principles and criteria for asset maximization that should be considered for any project. In the Final Report, the Commission recommends specific pilot projects that could be ideal for asset maximization, as well as a method for New York. The ability of wireless carriers to attach to existing utility infrastructure will fill in gaps in wireless service coverage areas including rural areas in the state, and will allow for the increased availability of wireless broadband service throughout the state.

² Case 03-M-0432, Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues, Order Adopting Policy Statement on Pole Attachments (Issued August 6, 2004)

³ Case 05-M-1481, Petition of National Grid Communications, Inc. (Gridcom) and Niagara Mohawk Power Corporation for Approval Authorizing Installation of IWO's Wireless Facilities on Niagara Mohawk Property in the Town of Halfmoon; Case 02-M-1288, Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications, Inc. for Approval to Authorize National Grid Communications, Inc. to Attach Wireless Facilities on Niagara Mohawk Transmission Facilities, Order Approving Petition (Issued January 24, 2006)

⁴ Case 06-M-0411 – Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications, Inc. Under Public Service Law Section 70

The Final Report includes Universal Broadband Internet Access as a pilot project which could be ideal for asset maximization. In the Final Report, SAM opined that "the expansion of any affordable, universal broadband network throughout the State can be achieved with the least cost and most benefit by enforcing alignment with the State's broadband strategy." SAM further stated that "this strategy provides minimum goals for coverage, speed and targets, and enables a balance of flexibility to incentivize the private sector to design, deploy, operate and maintain broadband networks.

In its Final Report, SAM suggests that:

Utilizing public private partnerships could result in accelerated broadband development, achieve cost savings, minimize the chance of failure and increase sustainability. The State can also leverage the capacity of a new network to provide additional services through telemedicine, distance learning, and expanded state-wide access to citizens and businesses. Further, making State-owned land available for wireless broadband expansion could accelerate capital investment by reducing the often costly and time-consuming permitting process.

Conclusion:

Since 2007, New York State has worked aggressively to develop and adopt a broadband strategy with a long term goal of bringing high speed, high capacity broadband to all New Yorkers. With its work on policy development, mapping, digital literacy, funding grant projects, reforming the pole attachment process, cable system rebuild initiatives, clarifying rulings for the telecommunications industry, and e-government efforts, New York is well positioned to achieve its vision of high speed, high capacity broadband for all New Yorkers.

Respectfully submitted,

A handwritten signature in black ink that reads "Melodie Mayberry-Stewart". The signature is written in a cursive, flowing style.

Melodie Mayberry-Stewart
Chief Information Officer and
Director of the NYS Office for Technology
Swan Street Building, Core 4
Albany NY 12223